

**VIA ECFS**

September 6, 2016

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

Re: MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

Roku, Inc. (“Roku”) has explained why the Commission should not establish HTML5 as a preferred or *de facto* technology standard for improving competition among video navigation devices.<sup>1</sup> HTML5 is a bulky architecture that was not designed for televisions. Supporting HTML5 would raise device hardware prices and discourage over-the-top television consumption. An HTML5 *de facto* standard would also slow the pace of innovation and limit valuable product differentiation in the marketplace.

Instead of favoring any one standard, the Commission should allow consumers to determine which technologies succeed. If the Commission pursues an apps-based approach, the Commission should promote competition in a technologically neutral manner by requiring MVPDs to develop apps for at least five widely deployed video navigation platforms in the United States. “Widely deployed video navigation platform” could be defined to include those platforms used primarily to access video programming for which a discrete implementation of a video app<sup>2</sup> can operate on at least 10 million active devices.<sup>3</sup> “Active devices” would be defined as devices that have been used at the direction

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<sup>1</sup> See Roku, Inc., Notice of Ex Parte, MB Docket No. 16-42, CS Docket No. 97-80 (filed July 8, 2016); Roku, Inc., Notice of Ex Parte, MB Docket No. 16-42, CS Docket No. 97-80 (filed Aug. 4, 2016).

<sup>2</sup> A “discrete implementation of a video app” would permit the aggregation of sales across multiple devices or operating system versions to meet the minimum threshold if a single implementation of an app would function across all of such devices and operating system versions. Stated differently, an MVPD should not be required to write multiple different apps for a manufacturer to account for legacy versions of its operating system or implementations across multiple devices if each implementation alone would not meet the relevant standard. Requiring support for device-specific apps or for each iteration of an operating system, whether deployed on devices made by a single manufacturer or multiple manufacturers, could undermine the network efficiencies of deploying common operating systems across devices, which would frustrate competition and consumer choice.

<sup>3</sup> Given the rapid growth in user adoption of streaming, Roku believes that a 10 million active device threshold over a continuous 90-day period demonstrates reasonable consumer acceptance in the market.

of an end user to access streaming video programming during the prior 90 days.<sup>4</sup> This definition would balance the need to ensure robust competition from multiple manufacturers of video navigation devices while allowing MVPDs to develop video navigation apps only for those platforms experiencing widespread consumer acceptance in the marketplace. Based on Roku's estimates and recent data, the proposed definition would mean that the operating systems associated with Apple TV, Chromecast, Roku streaming devices, Amazon Fire TV, and Samsung smart TVs would qualify as "widely deployed video navigation platforms."<sup>5</sup> And just as today's widely deployed platforms may experience a downturn in consumer acceptance and no longer qualify for MVPD-generated apps, novel operating systems could emerge to become widely deployed platforms in the future.<sup>6</sup>

The consumer-focused standard of requiring MVPDs to develop apps for any "widely deployed video navigation platform" would be relatively straightforward to administer. To have a streaming platform qualify as a "widely deployed video navigation platform," device manufacturers or operating system providers would self-certify that they operate such a platform, subject to the Commission's ability to request supporting information from a manufacturer or operating system provider in the event of a dispute. This approach would avoid locking in a single technical standard and would promote multiple competitive alternatives to the legacy leased cable set-top box while allowing for continued innovation in new services, devices and platforms.

Any apps framework should also include additional rules that could advance competitive alternatives to cable-leased set-top boxes. As Roku has previously described,<sup>7</sup> the Commission should require MVPDs to provide rich metadata to facilitate search and browsing functions in the device's native user interface. The Commission should likewise prohibit MVPDs from supporting third-party app development within any app that is used to satisfy the Commission's set-top box navigation rules to ensure the MVPD app does not become the single point of access for all content. In addition, the Commission should adopt a general non-discrimination standard to help ensure the user experience on a third-party device is not substantially dissimilar to the MVPD-supplied set-top box as well as an efficient enforcement process to resolve any disputes.

Finally, the Commission should require MVPDs to support seamless authentication of content-provider TV Everywhere apps on third-party streaming devices. These content-provider apps already exist on multiple platforms. TV Everywhere apps allow consumers who have paid an MVPD for content to access that content directly through a dedicated app using a streaming device, such as a Roku player, Apple TV, Amazon Fire TV and numerous other devices. Unfortunately, the

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<sup>4</sup> Roku believes that measuring active device usage based on a 90-day period is reasonable in the context of this rule making. Using a 90-day period would include devices that may not be used daily or monthly, but are still being used regularly by consumers.

<sup>5</sup> See, e.g., Parks Associates, 360 View Update, "Streaming Media Device Usage: Beyond Sales Receipts," available at <http://bit.ly/2bVXMP7>; Adam Lella, comScore, "Roku Leads OTT Streaming Devices in Household Market Share," (June 16, 2016) available at <http://bit.ly/29q7dqj>.

<sup>6</sup> MVPDs would remain free to develop apps for other operating systems, including HTML5-based apps, at any time regardless of the number of active devices using that product's operating system.

<sup>7</sup> See Roku, Inc., Notice of Ex Parte, MB Docket No. 16-42, CS Docket No. 97-80, at 2 (filed July 8, 2016)

cumbersome authentication process imposed by some MVPDs has greatly inhibited consumer use of TV Everywhere apps. Preventing MVPDs from imposing barriers to authentication would offer consumers a genuine choice for how to access the content that they have already paid to receive.<sup>8</sup>

A copy of this submission will be associated with the proceedings referenced above. Please contact us with any questions.

Sincerely,

*/s/ Trey Hanbury*

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Trey Hanbury  
Alexi Maltas  
HOGAN LOVELLS US LLP

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<sup>8</sup> See Roku, Inc., Notice of Ex Parte, MB Docket No. 16-42, CS Docket No. 97-80, at 2-3 (filed Aug. 4, 2016).